

Comments of the
Western Shoshone National Council
on the
United States Department of Energy
Supplemental Environmental Impact Statement
for a
Geologic Repository for the Disposal of
Spent Nuclear Fuel and High-Level
Radioactive Waste at Yucca Mountain

Las Vegas, Nevada

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My name is Ian Zabarte for the Western Shoshone National Council. [The SEIS does not include an understanding or analysis from a culturally appropriate tribal perspective. So, I will provide one. 4

Many of early treaties were negotiated hastily under pressure of encroaching settlements and outbreaks of violence. Many Indian tribes accepted inadequate compensation. Many Indian tribes joined the rebel armies during the American Civil War. The Western Shoshone Nation allied itself with the Republic of the United States by in the 1863 Treaty of Ruby Valley allowing for the shipment of gold east to pay for the Union's war and ultimate victory against the South. The State of Nevada was birthed under the blanket of aid and comfort that the Western Shoshone Nation provided. The treaty is in "full force and effect," a fact confirmed in 1989 by Reno Federal District Judge, Bruce R. Thompson, in the Dann Case.

In the 1863 the Western Shoshone Nation was strong. The US sought the purchase of specific rights of access and agreed to pay for damage caused to the ownership interests of the Western Shoshone Nation. In 1861 the US Congress enacted the Nevada Enabling Act excluding jurisdiction and Indian property from inclusion in Nevada:

"That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries and constitute no part of the Territory of Nevada..."

The Western Shoshone Nation is not subject to US jurisdiction. In 1883 the Nevada Supreme Court in State v. M'Kenney (18 Nev. 182) stated as much:

Where one Indian belonging to a tribe which is recognized and treated with by the government, having its chief and tribal laws, kills another of the same tribe, both parties being under the authority and subjection of such, tribal laws, the courts of this state, under its general criminal laws, have no jurisdiction of the offense...and since our organic act provides that the rights of person or property now pertaining to the Indians shall not be impaired, so long as they remain unextinguished by treaty between the United States and such Indians, it follows that the author ties of the Tribe alone have the right to take cognizance of the crime."

Land ownership, protected by a legal title, is a hallmark of western civilization. As it surveyed the Public Domain, the US began transferring title by right it obtained in land cessions from enabling legislation of territorial governments or treaties with Indians. The current regulatory authority for administration of public lands has no purchase power or authority to transfer ownership of property from the Western Shoshone Nation to the US.

Under 10 CFR 63 Land Ownership and Control the DOE is required to have ownership, jurisdiction and control of interest in land used as a repository (§ 63.121). The SEIS claims the Indian Claims Commission process, a quasi-judicial process and the Dann Case prove US title. If such is the process, judicial legislation, then it is suspect and the current claim of ownership by the DOE through federal land management statutes is a fraud to control Yucca Mountain to achieve through force what cannot be done in fair and honorable dealings with a smaller nation. The Nazi used similar processes to pursue their goal of domination after signing treaties of peace and non-aggression with neighbors. We are afraid of the prospect of nuclear waste in our country and fear the aggressive process deployed so forcefully that we are helpless to resist. The only role for Indian tribes is the removal of archeological resources (SEIS 11.3, Table 11-1). We live with uncertainty and fear about a process that requires removal of our cultural ties to our land.

When nuclear weapons are developed in our country our people are not protected. We find our own understanding of death and illness known to be plausible from exposure to radiation. We educate ourselves considering lifestyle differences that likely contribute to our adverse health consequences through unique exposure pathway related to our culture. We are certainly alone in the defense of our nation against the super power of the US.

... Continued
below

[After nine years from seeking affected tribe status the Timbisha Shoshone Tribe was certified as an affected in July of this year 2007 under the Nuclear Waste Policy Act of 1982. However, nearly six month later, the Timbisha Shoshone Tribe is refused funding to conduct its own oversight and monitoring of the DOE activities and adequately prepare for the Nuclear Regulatory Commission licensing process. The State of Nevada is funded.

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Many counties are funded but, not the Timbisha Shoshone Tribe. This is another disgustingly shameful example of discrimination by the DOE.]

[We are a special population with unique vulnerabilities. Unlike the US, the Western Shoshone Nation does have a national ethnic identity. Our cultural identity as a people is more important than US nuclear development and profit for the nuclear industry. Our culture is our strength as a people and is the wealth of our nation. The DOE study for the identification of cultural objects attempted to address how the DOE deals with Native American holistic relationships in the Yucca Mountain region. A tribal study group was created by the DOE. Recommendation were proffered by researchers and the tribal study participants then told they should accept the recommendations. The researchers understood that the recommendation they offered violated Native American traditional religious beliefs. The researchers themselves provided the outcomes of the process they conceived and call, "*cultural triage*," to support the DOE Yucca Mountain project. The work triage is of French origin. It denotes, "*The action of sorting according to quality*". When applied by the US for nuclear development on a living culture, "*cultural triage*" is genocide...A violation of the UN Convention on Punishment and Prevention of the Crime of Genocide and the Proxmire Act, the US enactments of the UN Convention. I have a responsibility to humanity to end the use of this process in the SEIS. So do you. A moral people with ethical scientists cannot condone the use of such practices benefit of the nuclear industry. ... ¹ continued

Transportation of waste to Yucca Mountain would place a disproportionate burden upon the Western Shoshone Nation and has not been addressed in the SEIS. It is environmental racism. [Special effects or stigma related impacts to Native Americans are not addressed in the SEIS or the Transportation EIS. Tribes along all transportation corridors and especially those with tourism based economies and gaming facilities must be assessed for stigma related impacts that may cause irreparable harm to tribal economies from a transportation accidents.] 3

These comments will be forwarded to the United Nations Human Rights Commission—
Committee on the Elimination of Racial Discrimination, the European Parliament,
Commission on Human Rights, the Organization of American States, Human Rights
Commission and the organization For Security and Cooperation in Europe for use by
those entities investigating human rights abuse committed against the Western Shoshone
Nation.